

## **EXHIBIT 3**



STATE OF DELAWARE  
DEPARTMENT OF ELECTIONS

September 20, 2022

Via email to: [dbensing@aclu-de.org](mailto:dbensing@aclu-de.org)

Dwayne J. Bensing, Esq.  
Legal Director  
ACLU of Delaware  
110 West 10<sup>th</sup> Street, Suite 706  
Wilmington, DE 19801

RE: Voter Registration and Absentee Ballot Processing for Eligible Incarcerated Persons

Dear Mr. Bensing:

Thank you for your letter of September 16, 2022 in which you contend that the Court of Chancery's recent ruling on the Vote-by-Mail litigation has "completely disenfranchised" incarcerated individuals who are otherwise eligible to vote, and in which you demand that the Department of Elections ("DOE") provide reasonable assurances that "eligible voters will be provided an opportunity to register to vote and vote in the 2022 General Election concluding on November 8, 2022, as demonstrated by providing the opportunity for eligible voters detained in [Department of Correction] custody to register to vote via same day voting or otherwise, and to vote in the November 8, 2022 General Election by providing a voting booth and voting machine staffed by [Department of Elections] at every location where eligible voters are being detained by DDOC."

The Court of Chancery's recent ruling in the Vote-by-Mail litigation does not impact the ability of eligible voters who are incarcerated in Delaware prison facilities to vote by absentee ballot. The "otherwise eligible persons who are incarcerated" absentee reason, which falls under the "Business or Occupation" reason set forth in Article V, Section 4A of the Delaware Constitution, is expressly included on the Department of Elections 2022 absentee ballot application form as a specific and authorized reason for voting absentee. The "otherwise eligible persons who are incarcerated" absentee reason has appeared on the Department's absentee ballot application for several election cycles. DOE has accepted, and will continue to accept, absentee ballot applications that are submitted with this reason. Therefore, these potential absentee voters

<https://h1ote.d.go.>

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STATE ELECTION COMMISSIONER  
905 S GOVERNORS AVE STE 170  
DDVER DE 19904  
PHONE: (302) 7394277

NEW CASTLE COUNTY OFFICE  
CARVEL STATE OFFICE BLDG  
820 N FRENCH ST STE 400  
WILMINGTON DE 19801  
PHONE: (302) 577-3464

KENT COUNTY OFFICE  
100 ENTERPRISE PL STE 5  
DOVER DE 19904  
PHONE: (302) 7394498

SUSSEX COUNTY OFFICE  
119N RACE ST  
POBOX457  
GEORGETOWN DE 19947  
PHONE: (302) 856-5367  
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are not, and have never been, "completely disenfranchised" as you contend. Please note that although these incarcerated individuals are able to register to vote up to and including Election Day, like all other absentee voters who will not have access to a voting machine at a polling place, they will need to ensure their absentee ballots are received by DOE by 8:00 p.m. on November 8th.

As you know, DOE has been working diligently with the Department of Correction ("DOC") to ensure eligible voters in DOC custody are able to register vote (if not already registered) and to exercise their right to vote by casting an absentee ballot. To that end, over the past several weeks the DOE, in cooperation with DOC, has:

- Prepared a detailed 11" x 14" informational poster (for posting in common areas in all DOC facilities) containing voter eligibility requirements, voter registration information and instructions, absentee ballot application instructions, as well as DOE contact information (including a direct dial number for incarcerated individuals to call to access a live DOE subject-matter expert);
- Provided copies of voter registration forms and absentee ballot applications; and
- Provided live training via Zoom to DOC mail room staff (across all facilities) to educate them on the appearance of incoming and outgoing absentee ballot envelopes, and absentee ballots (copies were provided as well), to facilitate the delivery and return of absentee ballots to those incarcerated individuals who request them from DOE.

DOE remains committed to continuing to work with DOC to ensure incarcerated individuals who are otherwise eligible to vote have access to the information and materials needed (1) to register to vote (if they so choose); and (2) to vote via absentee ballot should they further choose to exercise their right to vote in the upcoming November 8th General Election.

Sincerely,



Anthony Albence  
State Election Commissioner

cc: Frank Broujos, Deputy Attorney General, Delaware Department of Justice  
Momoe B. Hudson, Jr; Commissioner, Delaware Department of Correction  
Gregory E. Smith, Deputy Attorney General, Delaware Department of Justice